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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HONORABLE ROGER T. BENITEZ)

UNITED STATES OF AMERICA, Plaintiff, v. ALEJANDRO ROSAS-CAMPIZ [2], Defendant.	)	Case No. 08cr1192 BEN ***FIRST AMENDED*** MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTIONS

I. STATEMENT OF FACTS[1/]

Mr. Rosas-Campiz is charged in a six-count Indictment. Counts one, three, and five charge Mr. Rosas-Campiz with bringing in an illegal alien for financial gain in violation of 8 U.S.C. § 1324(a)(2)(B)(ii), and 18 U.S.C. § 2. Counts two, four and six charge Mr. Rosas-Campiz with transporting an illegal alien in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and (v)(II).

On February 28, 2008, border patrol agents were performing "roving anti-smuggling [activities] on the highways and back roads between [the] Pine Valley and Jacumba [exits]" on

[1/] This statement of facts and the facts contained in this motion are not concessions or admissions. Instead, they are based primarily on a review of the discovery provided by the government. Mr. Rosas-Campiz reserves the right to challenge the accuracy of these alleged facts and in no way admits to their accuracy.

Interstate 8. *See* Bates Stamp ("BS") 9.[2/] At approximately 4:50 a.m., Border Patrol Agent ("Agent") Mark Hansen allegedly observed a 1998 white Ford Explorer ("Ford Explorer") driving westbound on Interstate 8, approaching the Crestwood Road exit. *Id.* According to Agent Hansen, the Ford Explorer was driving just ahead of him on Interstate 8. *Id.* Agent Hansen alleges that the Ford Explorer was traveling at a slow rate of speed on Interstate 8. *Id.*

Agent Hansen alleges that on February 17, 2008, he observed the same Ford Explorer engaged in alien smuggling. *Id.* Although the agent alleges he and other border patrol agents apprehended two alien smugglers in the Ford Explorer on February 17, 2008, as well as 19 undocumented people in a separate load vehicle, Mr. Rosas-Campiz was neither driving nor was he a passenger in the Ford Explorer that day. *Id.*

Believing that the Ford Explorer was acting as a lookout or scout vehicle for another possible load vehicle on February 28, 2008, Agent Hansen passed the Ford Explorer and continued driving westbound on Interstate 8, in search of a possible load vehicle. *Id.* The Report of Investigation ("ROI") alleges that five minutes later and two interstate exits west of the Crestwood Road exit, he observed a black Nissan Titan ("Titan") pick-up truck, with paper dealer license plates, exiting Interstate 8. *Id.*

According to Agent Hansen, the Titan pulled to the wide dirt shoulder of the road and skidded to a stop at the Buckman Springs Road exit. *Id.* Agent Hansen alleges that before the Titan came to a stop, the rear cargo lights came on, indicating to him that the doors were opening. *Id.* Agent Hansen alleges that he saw 15 to 20 suspected undocumented people jump from the cab and open bed area of the Titan and begin to run northbound into the brush. *Id.* As the last of the passengers exited, Agent Hansen alleges he pulled up next to the Titan. *Id.*

While attempting to catch the undocumented people absconding from the Titan, Agent Hansen allegedly realized he had heard the Titan's motor still running. BS 10. Agent Hansen alleges he returned to the Titan a minute later, in an effort to secure it, and observed the Ford Explorer he had seen previously, stopped on the dirt shoulder of the road, directly adjacent to

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[2/] The Bates Stamp (BS) citations refer to the pages of discovery provided by the government to defense counsel.

the Titan. *Id*. The ROI is devoid of the time between the Titan's pulling over on the side of the road and the seeing of the Ford Explorer, also stopped on the side of the road.

Although Agent Hansen attempted to recover the driver and passenger of the Titan, neither were found, arrested, nor charged in this case.

Agent Hansen approached the passenger's side door of the Ford Explorer. *Id*. He identified himself as a border patrol agent. *Id*.; *see also* Exhibit A, "Declaration of Mr. Rosas-Campiz." Agent Hansen immediately took the keys out of the Ford Explorer's ignition and ordered the driver, Mr. Rosas-Campiz, and his passenger, Fortino Alvarado Ortega, to produce identification. *See* Exhibit A. In response to the agent's request, Mr. Rosas-Campiz produced his driver's license. BS 10; *see also* Exhibit A. Although the passenger of the Ford Explorer's identification card seemed counterfeit to Agent Hansen, there is no evidence suggesting that Mr. Rosas-Campiz's driver's license was counterfeit. BS 10.

Agent Hansen asked Mr. Rosas-Campiz why he had stopped on the side of the road. *Id*. Mr. Rosas-Campiz told the agent that he had stopped to go to the bathroom. *Id*; *see also* Exhibit A. Mr. Rosas-Campiz asked the agent if he could relieve himself and Agent Hansen allowed him to go. BS 10; *see also* Exhibit A. Although Agent Hansen believed the request to relieve himself in front of a federal agent was odd, there is no evidence suggesting that Mr. Rosas-Campiz did not relieve himself. In fact, Mr. Rosas-Campiz relieved himself in the bushes in plain sight of Agent Hansen. *See* Exhibit A. Even though he was able to go to the bathroom in the bushes, Mr. Rosas-Campiz did not feel free to leave because the agent still had the keys to the Ford Explorer and his driver's license. *Id*.

Although Agent Hansen recovered approximately seven undocumented people from the Titan, he never asked any of them to identify anyone in the Ford Explorer. BS 11. Agent Hansen never asked any of the seven undocumented people whether the Ford Explorer was involved in their transportation or whether they even recognized the Ford Explorer. *Id*.

The ROI alleges that Mr. Rosas-Campiz was arrested approximately 40 minutes after being first seen. *Id*. However, there is evidence to suggest that Mr. Rosas-Campiz was detained for approximately two hours on the side of the road. *See* Exhibit A. During this two-hour time frame, three agents were speaking to him and the passengers of the Ford Explorer. *Id.* One agent kept questioning Mr. Rosas-Campiz for the duration of the two hours. *Id.* He questioned Mr. Rosas-Campiz in the English language about his possible involvement regarding the Titan. Mr. Rosas-Campiz did not understand the agent very well because he does not speak very good English. *Id.* During this two-hour time frame, Mr. Rosas-Campiz did not feel free to leave because the agents still had the keys to the Ford Explorer and his driver's license. *Id.*

Mr. Rosas-Campiz was arrested and transported to a border patrol station. BS 11. Mr. Rosas-Campiz never gave the agents permission to search or move the Ford Explorer. *Id.* Yet, agents searched the Ford Explorer and allegedly found a crumpled up receipt in a green cup inside the vehicle. *Id.* According to Agent Hansen, the receipt he found inside the Ford Explorer was for a Motel 6 hotel room in El Cajon, California. *Id.* Agent Hansen allegedly went to the hotel and spoke with the hotel clerk. *Id.* The clerk checked the records and allegedly determined the room was rented to Alejandro Rosas. *Id.* Agent Hansen went to Room 119, the room allegedly rented by Alejandro Rosas, and found a man named Alberto Morales-Tobar. *Id.* According to Agent Hansen, Mr. Morales-Tobar told him that "Alejandro Rosas" had rented room number 119 and was the current renter for the room *Id.* Mr. Morales-Tobar allegedly told Agent Hansen that the night before, Mr. Rosas and Mr. Alvardo picked him up and took him to the Motel 6. *Id.* According to Agent Hansen, Mr. Morales-Tobar told him that Mr. Rosas was driving a newer black Nissan Titan when he picked Mr. Morales-Tobar up in Otay Mesa, California. *Id.*

After the inquiry with Mr. Morales-Tobar, Agent Hansen asked if he was willing to come to the station and make a sworn statement. BS 12. Mr. Morales-Tobar allegedly agreed to do so. *Id.* Mr. Morales-Tobar allegedly told Agent Hansen to keep certain receipts as evidence. *Id.*

At the border patrol station, Mr. Rosas-Campiz allegedly made statements. BS 13. According to the ROI, Mr. Rosas-Campiz stated that he came to San Diego to help his boss get the necessary paperwork for a vehicle and agreed to transport that vehicle to Mexico. *Id.* The ROI further alleges that Mr. Rosas-Campiz told agents that after dropping off this vehicle in

Mexico, he and his boss went to the Motel 6. *Id*. After that, he allegedly stated he received a call from his passenger, Fortino Alvarado Ortega, asking him if he could give him a ride to pick up a truck. *Id*. Mr. Rosas-Campiz allegedly stated he agreed to do so and allegedly admitted that he picked up Mr. Alvardo-Ortega and two others at the trolley station. *Id*.

Mr. Rosas-Campiz allegedly stated that after driving for a while westbound on Interstate 8, he decided to take the Buckman Springs Road exit to use the restroom. *Id*. Mr. Rosas-Campiz allegedly stated that shortly after deciding to pull over to relieve himself, he noticed a truck on the side of the road that had also pulled over to the shoulder. *Id*.

II. MOTION TO COMPEL DISCOVERY

Defendant moves for the production of discovery pursuant to FED. R. CRIM. P. 12(b)(4) and 16. This request is not limited to items the prosecutor knows of, but rather includes all discovery listed below that is in the custody, control, care, or knowledge of any investigative or other governmental agencies closely connected to the prosecution. *See Kyles v. Whitley*, 514 U.S. 419, 437 (1995); *United States v. Bryan*, 868 F.2d 1032, 1035 (9th Cir. 1989).

1. Defendant's Statements. The Government must reveal all written/oral statements made by Defendant, regardless of whether the Government intends to make any use of those statements. *See* FED. R. CRIM. P. 16(a)(1)(A); *id.* advisory committee's note (1991 amendments); *see also United States v. Bailleaux*, 685 F.2d 1105, 1113-14 (9th Cir. 1982).

2. Personnel Records of Government Officers Involved in the Interrogation. Defendant moves for production of all citizen complaints and other related internal affairs documents involving any of the immigration officers or other law enforcement officers who were involved in the investigation, arrest and interrogation of Defendant. *See Pitchess v. Superior Court*, 11 Cal. 3d 531, 539 (1974). Because of the sensitive nature of these documents, defense counsel will be unable to procure them from any other source.

3. Government Examination of Law Enforcement Personnel Files — Especially the Personnel Files and All Files Pertaining to the Interrogating Officers. Defendant requests that the Government examine the personnel files and any other files within its custody, care or control, or which could be obtained by the government, for all testifying witnesses,

including testifying officers. Defendant requests the attorney for the Government review these files for evidence of perjury or other similar dishonesty, or any other material relevant to impeachment, or any information that is exculpatory, pursuant to its duty under *United States v. Henthorn*, 931 F.2d 29, 30-31 (9th Cir. 1991). The obligation to examine files arises by virtue of the defense making a demand for their review. The Ninth Circuit in *Henthorn* remanded for *in camera* review of the agents' files because the government failed to examine the files of agents who testified at trial. This Court should therefore order the Government to review all such files for all testifying witnesses and turn over any material relevant to impeachment or that is exculpatory to Defendant before trial. Defendant specifically requests that the prosecutor, not the law enforcement officers, review the files in this case. The duty to review the files, under *Henthorn*, should be the prosecutor's. Only the prosecutor has the legal knowledge and ethical obligations to fully comply with this request. *See United States v. Jennings*, 960 F.2d 1488, 1492 (9th Cir. 1992); *see also Kyles v. Whitley*, 514 U.S. 438, 437 (1995) (prosecutors have "a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police").

4. Arrest Reports, Notes and Dispatch Tapes & Radio Traffic. Defendant also specifically moves for a copy of all arrest reports, notes, dispatch or any other tapes, and TECS records that relate to the circumstances surrounding Defendant's arrest or any questioning. This request includes any ***rough notes***, records, reports, transcripts or other documents in which Defendant's statements or any other discoverable material is contained.

5. Brady Material. Defendant moves for a copy of all documents, statements, agents' reports, and tangible evidence favorable to Defendant on the issue of guilt or which affects the credibility of the Government's witnesses and case. Under *Brady*, impeachment and exculpatory evidence constitutes evidence favorable to the accused. *See United States v. Bagley*, 473 U.S. 667, 676-78 (1985); *United States v. Agurs*, 427 U.S. 97, 102-06 (1976).

6. Defendant's Prior Record. Under FED. R. CRIM. P. 16(a)(1)(B), Defendant specifically moves for a copy of Defendant's prior criminal record within the possession,

custody, or control of the government. Defendant specifically requests that the copy be complete and legible; faint, obscured or otherwise illegible copies of rap sheets are not acceptable.

7. Any Proposed 404(b) Evidence. The government must produce evidence of "other acts" under FED. R. CRIM. P. 16(a)(1)(C) and FED. R. EVID. 404(b), 609. *See United States v. Vega*, 188 F.3d 1150, 1154 (9th Cir. 1999) (holding that Rule 404(b) "applies to all 'other acts,' not just bad acts"). This request includes any TECS records the Government intends to introduce at trial, whether in its case-in-chief, for possible impeachment, or in rebuttal. *Id.* In addition, under Rule 404(b), Defendant specifically requests the government "provide reasonable notice in advance of trial . . . of the general nature" of any evidence the government proposes to introduce under FED. R. EVID. 404(b) at trial. *See id.* at 1154-55. Additionally, Defendant requests that such notice be given ***three weeks*** before trial to give the defense time to adequately investigate and prepare for trial.

8. TECS Reports. Defendant moves for all TECS reports. Rule 404(b) "applies to all 'other acts,' not just bad acts." *Vega*, 188 F.3d at 1154; *see* FED. R .EVID. 404(b).

9. Evidence Seized. Under Fed. R. Crim. P. 16(a)(1)(C), the defense moves for a copy of discovery of evidence seized as a result of any search.

10. Tangible Objects. Under Fed. R. Crim. P. 16(a)(2)(C), Defendant specifically requests the opportunity to inspect and copy and test, if necessary, all documents and tangible objects, including any books, papers, photographs, buildings, automobiles, or places, or copies, depictions, or portions thereof which are material to the defense or intended for use in the government's case-in-chief, or were obtained from or belong to Defendant.

11. Evidence of Criminal Investigation of Any Government Witness. Defendant moves for production of any evidence that any prospective witness is under investigation by federal, state or local authorities for any criminal conduct.

12. Jencks Act Material. Defendant moves for production in advance of trial of all material, including dispatch tapes, which the Government must produce pursuant to the Jencks Act, 18 U.S.C. § 3500 and FED. R. CRIM. P. 26.2. Advance production will avoid the possibility of delay at the request of defendant to investigate the Jencks material. A verbal

acknowledgment that "rough" notes constitute an accurate account of the witness' interview is sufficient for the report or notes to qualify as a statement under § 3500(e)(1). *Campbell v. United States*, 373 U.S. 487, 490-92 (1963).

13. Expert Summaries. Defendant moves for production of written summaries of all expert testimony the Government intends to present under Federal Rules of Evidence 702, 703 or 705 during its case-in-chief, written summaries of the bases for each expert's opinion, and written summaries of the experts' qualifications. FED. R. CRIM. P. 16(a)(1)(E)-(G).

14. Reports of Scientific Tests or Examinations. Under Fed. R. Crim. P. 16(a)(1)(D), Defendant moves for discovery of the reports of all tests and examinations conducted upon the evidence in this case, including but not limited to any fingerprint analyses or chemical tests that are within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government, and which are material to the preparation of the defense or which are intended for use by the government as evidence-in-chief at trial.

15. Residual Request. Defendant intends by this discovery motion to invoke the right to discovery to the fullest extent possible under the Federal Rules of Criminal Procedure and the Constitution and laws of the United States. This request specifically includes all subsections of Rule 16. Defendant requests that the Government provide Defendant and his attorney with the above requested material sufficiently in advance of trial to avoid unnecessary delay before trial and before cross-examination.

III. MOTION TO PRESERVE EVIDENCE

Defendant specifically moves for the preservation of all dispatch tapes and any other physical evidence that may be destroyed, lost, or otherwise put out of the possession, custody, or care of the Government and which relates to the arrest or the events leading to the arrest in this case. *See Riley*, 189 F.3d at 806-08. Defendant further requests that the government be ordered to question all the agencies and individuals involved in the prosecution and investigation of this case to determine if such evidence exists, and if it does exist to instruct those parties to preserve it. This request also includes any material or percipient witness who might be deported or is otherwise likely to become unavailable (e.g., undocumented aliens and transients). U.S. Customs Service requires a court order for the preservation of narcotics, and Defendant hereby moves for such an order.

IV. MOTION TO SUPPRESS EVIDENCE

A. Mr. Rosas-Campiz Was Seized For Purposes of Fourth Amendment Protection.

"When a police officer makes a traffic stop, the driver of the [vehicle] is seized within the meaning of the Fourth Amendment." *Brendlin v. California*, ___U.S.___, 127 S.Ct. 2400, 2403 (2007). A person is seized by the police when the officer, "'by means of physical force or show of authority,' "terminates or restrains his freedom of movement." *Id*. at 2405 (*citing Florida v. Bostick*, 501 U.S. 429, 434 (1991). A seizure occurs if "in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Brendlin*, 127 S.Ct. at 2405 (*citing United States v. Mendenhall*, 446 U.S. 544, 554 (1980). Subjective intent of an officer is irrelevant in ordinary Fourth Amendment analysis. *Id*. at 2408-2409.

At the time Agent Hansen approached Mr. Rosas-Campiz's passenger side door, identified himself as a border patrol agent, and immediately took the keys out of the ignition, Mr. Rosas-Campiz was clearly detained for purposes of Fourth Amendment protection. Moreover, Mr. Rosas-Campiz was further detained when the agent took his driver's license and did not give it back to him. Under these set of facts, a reasonable person would not feel free to leave. Therefore, the Court must determine whether Mr. Rosas-Campiz was lawfully detained, and arrested on the side of the road at the Buckman Springs Road exit.

B. There Was No Reasonable Articulable Suspicion to Stop Mr. Rosas-Campiz and His Statements and the Fruits of Any Search Should Therefore, Be Suppressed.

"The Fourth Amendment's prohibition against unreasonable searches and seizures extends to the investigatory stop of a vehicle." *United States v. Sigmond-Ballesteros*, 285 F.3d 1117, 1121 (9th Cir. 2002); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975)

(The Fourth Amendment "applies to all seizures of the person including seizures that involve only a brief detention short of arrest").

In determining whether an investigatory stop is made based on reasonable suspicion, the court "must look at the 'totality of the circumstances' of [the] case to see whether the detaining officer ha[d] a 'particularized and objective basis' for suspecting legal wrongdoing." *Sigmond-Ballesteros*, 285 F.3d at 1121; *United States v. Arvizu*, 534 U.S. 266 (2002); *United States v. Cortez*, 449 U.S. 411, 417-18 (1981); *see also United States v. Rodriguez*, 976 F.2d 592, 594 (9th Cir. 1992), *amended by* 997 F.2d 1306 (9th Cir. 1993) (An officer may not detain a motorist without a showing of a "particularized and objective basis for suspecting the particular person stopped of criminal activity") (internal quotation marks omitted). While the test looks to the "totality of the circumstances," the inquiry nevertheless necessitates a dual approach. First, the court must determine whether there exists specific and articulable facts which, coupled with reasonable inferences, would lead a reasonable, objective officer to believe criminal activity is afoot. *Sigmond-Ballesteros*, 285 F.3d at 1121. Second, the court must determine whether those facts and inferences create a sufficient "basis for suspecting the *particular person* stopped of criminal activity." *United States v. Rodriguez*, 976 F.2d 592, 595 (9th Cir. 1992) (emphasis added).

The "reasonable suspicion" requirement means that an officer must reasonably suspect that *the person he or she wishes to detain* is involved in suspicious activity." *United States v. Lopez-Soto*, 205 F.3d 1101, 1103 (9th Cir. 2000) (emphasis added). To satisfy this burden, the officer must be able to point to "specific and articulable facts which, together with objective and reasonable inferences, form the basis for suspecting that *the particular person detained* is engaged in criminal activity." *Id.* at 1105.

1. Location and proximity to the border.

The ROI states that the area Mr. Rosas-Campiz was detained is one of "many locations . . . [that is a] well-known alien smuggling load-up, drop-off and checkpoint circumvention area." BS 9. However, a "location or route frequented by illegal immigrants, but also by many legal residents, ***is not*** significantly probative to an assessment of reasonable suspicion." *United*

States v. Manzo-Jurado, 457 F.3d 928, 936 (9th Cir. 2006) (*citing Sigmond-Ballesteros*, 285 F.3d at 1124) (emphasis added).

Interstate 8 is used by thousands of law-abiding persons. Legal residents use it as a route to legally gamble at the Viejas Casino and the Golden Acorn Casino. Lawful travelers use Interstate 8 as a route to get to Julian and El Centro. Truck drivers use Interstate 8 to bring cargo to and from El Centro. Attorneys use Interstate 8 to make court appearances in El Centro. The fact that the route is commonly used by alien smugglers should therefore, have little, if any, value in the reasonable suspicion analysis. Interstate 8 is a major interstate highway, not a dirt road near the border.

2. There were no evasive maneuvers used to evade, hide or locate border patrol vehicles.

There is no evidence that the Ford Explorer was attempting to ***evade*** a border patrol checkpoint. *See generally United States v. Montero-Camargo*, 208 F.3d 1122 (finding reasonable suspicion where two cars with Mexicali license plates were driving in tandem; the cars made U-turns on the highway instead of using an exit; after the U-turn, both cars stopped together near the checkpoint in a place where agents at the checkpoint could no longer view the cars; and an anonymous tip told agents that the cars in question were driving in tandem and made a U-turn near the checkpoint).

Montero-Camargo is distinguishable from this case. Here, Agent Hansen alleges that the Ford Explorer was driving slowly on the Interstate. BS 9. However, there is no indication as to how slowly it was traveling. Moreover, driving slowly can hardly be equated with making evasive maneuvers to try and avoid a border patrol checkpoint or try and located border patrol vehicles. Although Agent Hansen alleges that there was a border patrol checkpoint west of the Buckman Springs Road exit, there is no evidence that the Ford Explorer attempted to avoid the checkpoint or conduct a turnaround in the middle of the Interstate. Thus, there is no particularized suspicion regarding the Ford Explorer. *See Montero-Camargo*, 208 F.3d at 1136 (evasive behavior may be an appropriate factor in reasonable suspicion analysis and evasive behavior is defined as "'obvious attempts to evade officers' or hide.") (*citing Brignoni-Ponce*, 422 U.S. at 885).

In *Montero-Camargo*, 208 F.3d at 1136-37, the court discussed three cases where evasive behavior was found to be relevant in a reasonable suspicion analysis including the following: (1) a suspect that took an erratic path through an airport in an attempt to avoid police; (2) after seeing police, three people spoke "furtively" amongst each other and one gentleman was overheard saying, "get out of here," and one of the three men actually attempted to flee; and (3) a case involving "obvious attempts to evade officers or hide."

None of these factors is present in this case. Therefore, the Court should not consider the Ford Explorer's alleged slow driving.

3. There is no evidence of tandem driving.

The court in *Montero-Camargo*, 208 F.3d at 1139, found that tandem driving in that case was a significant factor in the court's reasonable suspicion analysis. However, in that case, the court considered other circumstances surrounding the tandem driving in making that conclusion. *Id*. The cars in that case not only turned around together but did so in the middle of the highway; the cars immediately pulled off to the side of the road together where criminal activity took place, and both cars had Mexicali license plates. *Id*. Here, there is no evidence of tandem driving between the Ford Explorer and the Titan. Agent Hansen's mere hunch that there might be a load vehicle ahead of the Ford Explorer does not amount to particularized reasonable suspicion. Agent Hansen never saw the Ford Explorer and the Titan driving in tandem. Accordingly, there was no reasonable suspicion to believe the Ford Explorer and the Titan were in any way connected.

4. Several factors weigh in favor of a finding of a lack of reasonable suspicion.

Even if the Court considers the factors outlined in the ROI, it must also consider factors that weigh against a finding of reasonable suspicion. *See Manzo-Jurado*, 457 F.3d at 938 (the "totality of circumstances test takes into account both factors weighing for and against reasonable suspicion.") (citations omitted).

Agents did not have reasonable suspicion to stop and arrest Mr. Rosas-Campiz at the Buckman Springs Road exit. Simply because Mr. Rosas-Campiz pulled over to the side of the road to relieve himself is not enough to form an objective basis to believe ***Mr. Rosas-Campiz*** was engaged in criminal activity. Agent Hansen did not have reasonable suspicion to believe that Mr. Rosas-Campiz was engaged in criminal activity, namely that he was transporting illegal aliens in the United States. *See Brignoni-Ponce*, 422 U.S. at 881 ("When an officer's observations' lead him reasonably to suspect a particular vehicle may contain [illegal] aliens . . . , he may stop the [vehicle] briefly and investigate the circumstances that provoke [his] suspicion[s]"). In this case, there was no reasonable suspicion to support an objective belief that Mr. Rosas-Campiz was doing anything on the side of the road, other than stopping to relieve himself.

Furthermore, Agent Hansen did not have any reason to suspect the Ford Explorer was connected with the Titan. There was no tandem driving observed. Although he detained seven undocumented people that absconded from the Titan, Agent Hansen never asked them to identify anyone from the Ford Explorer. He never asked them whether they had seen the Ford Explorer earlier in the evening.

Finally, the lack of tandem driving between the vehicles, as well as the lack of evasive maneuvers on the part of the Ford Explorer, together with the factors addressed above, further supports a finding that there was no particularized reasonable suspicion to detain the Ford Explorer.

5. Conclusion.

For the foregoing reasons, Mr. Rosas-Campiz was unlawfully detained and precipitously arrested.

V. MOTION TO SUPPRESS STATEMENTS

Thus, Mr. Rosas-Campiz's ***statements*** and other fruits of the stop and arrest were made as a result of an unlawful detention and should be suppressed. *See generally United States v. Wong Sun*, 371 U.S. 471, 487 (1963). Simply because *Miranda* warnings were given sometime after the unlawful detention and before interrogation does not ***alone*** purge the taint of the illegal detention. *Brown v. Illinois*, 422 U.S. 590, 601 (1975). All tangible and intangible fruits seized as a result of Mr. Rosas-Campiz's unlawful detention should also be suppressed.

A. Assuming There Was Reasonable Suspicion to Stop Mr. Rosas-Campiz, the Stop Exceeded What Was Necessary to Confirm or Dispel the Agents' Suspicions.

Brief *Terry* detentions are permissible when law enforcement wishes to follow up on suspected criminal activity. An officer must use "the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *Florida v. Royer*, 460 U.S. 491, 500 (1983). The *Terry* detention must be limited in scope to confirm or dispel the justification for the stop. *Terry*, 392 U.S. at 29. A seizure that goes beyond *Terry*'s limited scope must be supported by probable cause in order to withstand a challenge to the Constitutionality of the stop. *Royer*, 460 U.S. at 496.

Here, law enforcement dispelled any suspicions it had with regard to Mr. Rosas-Campiz shortly after detaining him. After agents determined that Mr. Rosas-Campiz had stopped to relieve himself and watched him relieve himself, their suspicions should have been dispelled. Furthermore, Agent Hansen had every opportunity to confirm or dispel his suspicions that the Ford Explorer was somehow connected with the Titan when he detained the seven undocumented people from the Titan. He could have determined whether any of them recognized Mr. Rosas-Campiz or his passengers. He also could have determined whether those people recognized the Ford Explorer. Because he failed to dispel his suspicions, the two hour detention exceeded the scope allowed for in Terry. Thus, Mr. Rosas-Campiz was unlawfully detained on the side of the road. Probable cause did not exist to extend the *Terry* detention because agents never confirmed or dispelled their suspicions despite having every opportunity to do so.

The seizure extended beyond constitutional bounds and was therefore, unlawful. Mr. Rosas-Campiz's statements should be suppressed, as well as other fruits obtained as a result of the unlawfully extended detention.

B. Mr. Rosas-Campiz's Statements Were Obtained As a Result of an Unlawful Arrest and Should Be Suppressed.

A *Terry* detention becomes a de facto arrest when it becomes so intrusive that it can no longer be characterized as "a minimal intrusion designed quickly to confirm or dispel the suspicions which justified the initial stop." *United States v. Sharpe*, 470 U.S. 675, 683-686 (1985). Mr. Rosas-Campiz's detention turned into a de facto arrest the instant he identified himself as a border patrol agent; grabbed the keys out of the Ford Explorer's ignition and demanded the driver and passenger to produce identification. Assuming there was reasonable suspicion to investigate whether Mr. Rosas-Campiz was engaged in an unlawful activity, at the time Agent Hansen approached Mr. Rosas-Campiz's vehicle, there was no probable cause to arrest him.

To arrest an individual, there must be articulable facts to believe that an offense has been or is being committed ***by the person*** being arrested. *Dunaway v. New York*, 442 U.S. 200, 208, fn. 9 (1979). ***Mere propinquity*** to criminal conduct does not give rise to probable cause to arrest or to search an individual. *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979). Probable cause must be particularized to the person suspected. *Id.* This requirement cannot be undercut or avoided simply by pointing to the fact that by coincidence, there exists probable cause to arrest another person. *Id.*

Probable cause to arrest Mr. Rosas-Campiz was lacking and his arrest was therefore, unlawful. Thus, any statements Mr. Rosas-Campiz made during his interrogation should be suppressed because they were a direct result of his unlawful detainment, which led to his unlawful arrest. Likewise, any fruits obtained as a result of Mr. Rosas-Campiz's unlawful arrest should also be suppressed because no exception to the warrant requirement exists in this case.

VI. LEAVE TO FILE FURTHER MOTIONS

Defendant hereby requests leave to file further motions as may be necessary.

VII. CONCLUSION

For the reasons stated above, Defendant respectfully requests that this Court grant the foregoing motions.

Dated: *August 28, 2008*

s/Oliver P. Cleary

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